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Division of Law  
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P.O. Box 45029  
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Attorney for Plaintiffs

By: Lisa D. Kutlin  
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**FILED**  
AUG 26 2010  
Chancery/General Equity

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
PASSAIC COUNTY  
DOCKET NO. PAS-C-24-09

PAULA T. DOW, Attorney General of the State  
of New Jersey and THOMAS R. CALCAGNI,  
Acting Director of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

vs.

CASEY PROPERTIES, LLC; SETH L.  
GENDEL; MARTIN A. GENDEL; LEE ALAN  
LLP; FRANCIS T. MEMMO; KELLY  
KOTZKER; DAMIEN FIGUEROA; EDWARD  
EVANS; NICHOLAS MANZI; and ROBERT  
B. "BARRY" MCBRIAR,  
Defendants.

Civil Action

**CONSENT JUDGMENT AS TO  
DEFENDANT NICHOLAS MANZI**

WHEREAS, the parties to this Action are Plaintiffs PAULA T. DOW, Attorney General of the State of New Jersey ("Attorney General") and THOMAS R. CALCAGNI, Acting Director ("Director") of the New Jersey Division of Consumer Affairs, ("Division") (collectively "Plaintiffs"), and Casey Properties, LLC; Seth L. Gendel; Martin A. Gendel; Lee Alan, LLP; Francis T. Memmo; Kelly Kotzker; Damien Figueroa; Edward Evans; Nicholas Manzi; and Robert B. "Barry" McBriar. As evidenced by their signatures below, Plaintiffs and Defendant Nicholas Manzi ("Settling Defendant" or

“Defendant Manzi”) (collectively “Parties”) consent to the entry of this Consent Judgment (“Consent Judgment”) and its provisions as to Defendant Manzi without trial of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND AGREED  
AS FOLLOWS:**

**PART ONE: DEFINITIONS**

1. Unless otherwise specified, the following definitions shall apply to this Consent Judgment:

a. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

b. “Effective Date” means the date this Consent Judgment is executed by the parties hereto and the Court.

c. “Including” means without limitation.

d. The use of the singular form of any word includes the plural and vice versa.

e. “CFA” means the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

f. “RICO” means the New Jersey RICO statute, N.J.S.A. 2C:41-1 et seq.

g. “Referral Source” means any person, entity, or company that recommends Settling Defendant’s services to any person, entity, or company, or requires that any person, entity or company use Settling Defendant’s services;

h. "Purchase Assignment" means any contracts or proposed contracts for sales of real estate whereby Settling Defendant is aware that one buyer replaced another pursuant to an option exercised by the first buyer, or by the first buyer and the seller.

## **PART TWO: COMPLIANCE WITH THE LAW**

2. Settling Defendant agrees to comply fully with all Federal and State banking and consumer protection laws, including but not limited to the CFA and RICO.

## **PART THREE: INJUNCTIVE RELIEF**

3. Settling Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of any business and shall comply with such state and/or federal laws, rules and regulations as now constituted or as may hereafter be amended, including all Federal and State banking and consumer protection laws, including the CFA and all regulations promulgated thereunder.

4. Settling Defendant shall not misrepresent or knowingly conceal, suppress and/or omit any material fact in connection with any purchase or sale of real estate within the State of New Jersey, and shall comply with all applicable state and/or federal laws, rules and regulations as now constituted or as hereafter amended, including, but not limited to, RICO.

5. When representing buyers in residential real-estate closings, Settling Defendant shall:

- a. Not accept anything of value from a Referral Source;
- b. Inform his clients, if Settling Defendant has actual knowledge of these facts: (i) whether the clients' contracts are Purchase Assignments, (ii) how the terms of the clients' contracts compare with the previous contracts or proposed contracts,

including disclosure of any increases in the purchase prices, (iii) who will benefit from the Purchase Assignments and how, (iv) the identities of parties to the previous contracts or proposed contracts, and (v) the identities of their legal counsel or other representatives;

c. Fully disclose on HUD-1 Settlement Statements any Purchase Assignments, including by identifying funds disbursed because of any assignments of sales contracts as “assignments”;

d. Disburse all funds in accordance with final HUD-1 Settlement Statements;

e. Not accept anything of value in connection with the closings without disclosure to the lender and Settling Defendant’s clients;

f. Not allocate money from closing proceeds to anyone, including to any Referral Source, without obtaining sufficient documentation to substantiate such payments and disclosing all such payments and documentation to any lenders providing funds for such closings and to Settling Defendant’s buyers/clients;

g. Meet with Settling Defendant’s clients outside the presence of any Referral Source to review and explain details of transactions, including terms of loans, purchase prices, secondary financing, funds to close, prior sales within two years, parties to prior sales, and what, if anything, any Referral Source will gain from the transactions, and to answer clients’ questions;

h. Review residential mortgage applications and other loan documents with Settling Defendant’s clients and ask whether they intend to use and occupy the properties as represented in those documents, including whether the clients intend to use and occupy the properties as their primary residences. If any client indicates that he does not intend to use and occupy a property as indicated on his residential mortgage application, Settling

Defendant may not conduct that closing without correcting the misstatements, including informing the lenders providing funds for such closing in writing of the buyer's intention and receiving written approval that the closing may nevertheless proceed then or at a later date;

i. Provide directly to Settling Defendant's clients any documents intended for them, regardless whether additional copies are supplied to the clients' agents;

j. Maintain a list, available for inspection upon three days' notice from Plaintiffs, documenting all Referral Sources and resulting transactions from each Referral Source and also maintain a complete record of anything of value Settling Defendant received and disbursed in connection with such transactions, including a complete record of funds disbursed to and from Settling Defendant's accounts; and

k. Make Settling Defendant's attorney trust account records available for inspection upon three days' notice from Plaintiffs.

6. Regardless of whether Settling Defendant is representing a party to a closing, he shall not assist in doing any action that if done by him would violate the terms of paragraph 5, above.

7. Settling Defendant shall report in writing to Plaintiffs any real estate or banking transactions of which he is or becomes aware that violate the CFA or RICO, as well as any solicitations made to him to participate in any conduct that violates the CFA or RICO.

8. Settling Defendant shall fully and promptly cooperate with Plaintiffs and/or their respective representatives in court or administrative proceedings, any preparations therefore, and any investigations regarding the subject matter of the Complaint in this

matter or any subsequent amendments thereto, or any other investigations or proceedings Plaintiffs may initiate. Such cooperation shall include, without limitation and without subpoena:

a. Voluntary production of all documents or other tangible evidence requested which has not already been produced to Plaintiffs;

b. Voluntary and prompt attendance at all proceedings at which the Defendant's presence and/or testimony is requested by Plaintiffs, where Defendant shall give voluntary forthright and complete testimony; and

c. Voluntary forthright, truthful and complete responses to all inquiries from Plaintiffs to the Defendant.

d. Settling Defendant agrees to respond to any requests by Plaintiffs for documents or information in a timely and complete manner.

#### **PART FOUR: MONETARY RELIEF**

9. The Parties have agreed to a Settlement of the Action in the amount of \$75,000 (the "Settlement Amount").

10. Twenty-Five Thousand Dollars (\$25,000.00) of the Settlement Amount shall be paid on or before February 1, 2011.

11. The payment referenced in paragraph 10 shall be made by wire transfer or certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Jennifer Micco, Supervising Investigator  
Office of Consumer Protection  
Division of Consumer Affairs  
124 Halsey Street – 7th Floor  
P.O. Box 45025  
Newark, New Jersey 07101

12. Upon making the payment referenced in paragraphs 10 and 11, Settling Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

13. For a period of four years from the Effective Date, the Fifty-Thousand Dollar (\$50,000.00) balance ("the Suspended Penalty") of the Settlement Amount shall be suspended and automatically vacated at the end of that period, provided:

- a. Settling Defendant complies in all material respects with the terms and conditions set forth in Paragraphs 2 through 12 of this Consent Judgment;
- b. Settling Defendant timely makes the payment referenced in paragraphs 10 and 11;
- c. Plaintiffs do not uncover information that Settling Defendant made any material misrepresentation or material lack of disclosure concerning his knowledge of or involvement in the activities described in the Complaint; and
- d. Settling Defendant does not engage in any unlawful conduct in connection with real estate transactions.

14. In the event Settling Defendant materially fails to comply with paragraph 13, the entire Settlement Amount (\$75,000) shall be immediately due and payable upon notice by the Plaintiffs as provided in paragraph 33.

## **PART FIVE: JURISDICTION AND OTHER PROVISIONS**

15. Pursuant to RICO, jurisdiction of this Court over the subject matter and over the Settling Defendant for purposes of entering into and enforcing this Consent Judgment is admitted. Jurisdiction is retained by this Court for such further orders and directions as may be necessary or appropriate for the construction and modification of the injunctive provisions herein, or execution of this Consent Judgment, including punishment for any violation of this Consent Judgment. If the Plaintiffs are required to file a petition to enforce any provision of this Consent Judgment against Settling Defendant, Settling Defendant agrees to pay any court costs and reasonable attorneys' fees associated with any successful petition to enforce any provision of this Consent Judgment.

16. Venue is proper in this Court, and venue as to all matters between the Parties relating hereto or arising out of this Consent Judgment is solely in the Superior Court of New Jersey, Passaic County.

17. The Parties consent to the entry of this Consent Judgment for the purposes of settlement only without this Judgment constituting evidence against or any admission by any party and without trial of any issue of fact or law. This Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Settling Defendant or any other party. Further, this Consent Judgment shall not be competent evidence in any judicial or other proceeding of any liability or wrongdoing by Settling Defendant.

18. The entry of this Consent Judgment has been consented to by Settling Defendant as his own free and voluntary act, after conferring with his counsel, Frank Imparato, Esq., and with full knowledge and understanding of the nature of the proceedings and the



obligations and duties imposed upon him by this Consent Judgment. Settling Defendant consents to the entry of this Consent Judgment without further notice and avers that no offer, agreement or inducements of any nature whatsoever have been made to him by the Plaintiffs or their attorneys or by any employee of the Office of the Attorney General to procure this Consent Judgment.

19. In the event that the Court shall not enter this Consent Judgment, this proposed Consent Judgment shall be of no force and effect against the Attorney General of New Jersey and the Director or the Settling Defendant.

20. This Consent Judgment shall bind the Parties hereto and shall be binding on any and all successors and assigns, successors-in-interest, agents, representatives, and employees, directly or indirectly or through any corporation or anyone acting directly or indirectly on Settling Defendant's behalf.

21. Settling Defendant has, by his signature and the signatures of its respective counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with entry of this Consent Judgment concerning past conduct addressed in this Consent Judgment.

22. In exchange for the consideration set forth herein, and conditioned upon Settling Defendant making payment referenced in paragraphs 10 and 11, Plaintiffs agree to release Settling Defendant from all civil claims asserted against Settling Defendant in Plaintiffs' Complaint. This release does not apply to any other party to this Action. The release language in this paragraph is not intended to apply to any private right of action brought by any individual or entity or to any other federal or state authority not a party to this Consent Judgment, or to any criminal action.

23. The monetary relief in this Consent Judgment is imposed pursuant to the police and regulatory powers of the State of New Jersey for the enforcement of the law and the protection of the public welfare, and is not intended to constitute a debt which may be limited or discharged in a bankruptcy proceeding. Settling Defendant waives the right to argue, submit, propose, seek to establish or otherwise contend before any court or tribunal that obligations of this Consent Judgment against him or any of his bankruptcy estates, including claims or debt based on this Consent Judgment, are dischargeable debt or claims under the United States Bankruptcy Code (including under 11 U.S.C. § 523, including 11 U.S.C. § 523 (a)(7), (a)(19)) or any other federal or state law.

24. This Consent Judgment, when fully executed and performed by Settling Defendant to a reasonable expectation of the Attorney General, will resolve all claims against Settling Defendant that were raised in the Complaint filed by the Attorney General in this action. However, nothing in this Consent Judgment is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.

25. Notwithstanding any provision of this Consent Judgment to the contrary, the Office of the Attorney General may, in its sole discretion, grant written extensions of time for Settling Defendant to comply with any provision of this Consent Judgment.

26. The signatories to this Consent Judgment warrant and represent that they have read and understand this Consent Judgment, that they are duly authorized to execute it, and that they have the authority to take all appropriate action required to be taken pursuant to the Consent Judgment to effectuate its terms.

27. This Consent Judgment may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

28. This Consent Judgment is final and binding on the Parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Consent Judgment. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

29. All of the terms of this Consent Judgment are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all Parties hereto approved by the Court or with Court approval.

30. This above captioned lawsuit shall be dismissed with prejudice as to Defendant Manzi. However, the Court shall retain jurisdiction over the Parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.

31. This Consent Judgment supersedes and renders null and void any and all written or oral prior undertakings or agreements between the Parties regarding the subject matter hereof.

32. If any provisions, terms, or clauses in this Consent Judgment are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Consent Judgment shall remain valid and binding on the Parties.

33. Failure to comply with any provision of this Consent Judgment shall be considered a violation of this Consent Judgment. Upon such a violation, Plaintiffs may

take any and all steps available to enforce this Consent Judgment, including seeking an order of contempt. However, in the event of a dispute among the Parties regarding any issue arising hereunder, the Parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention, Plaintiffs shall provide Defendants with the specific details of the alleged noncompliance, and Defendants shall be afforded a fifteen-(15) day period within which to cure any such noncompliance. In the event of Defendant's failure to cure any such noncompliance, Plaintiffs may move on short notice or by Order to Show Cause to have a judgment entered for the entire Settlement Amount, including any suspended portion of that Settlement Amount. Settling Defendant shall have the right to submit opposition to any motion or Order to Show Cause application filed by Plaintiffs and to contest same on any return date. Upon being presented with evidence that Defendant Manzi has failed to materially comply with this Consent Judgment, the Court will enter judgment for the entire balance of Defendant Manzi's Settlement Amount and for Plaintiffs' costs associated with investigating and litigating that noncompliance, including reasonable attorneys' fees.

34. Failure by any party to seek enforcement of this Consent Judgment pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

35. Nothing in this Consent Judgment shall preclude a right of action by action by any person not a party to this Agreement.

36. All communications and notices regarding this Consent Judgment shall be sent by first class mail, e-mail, and facsimile, if twenty-five (25) pages or less in length, to:

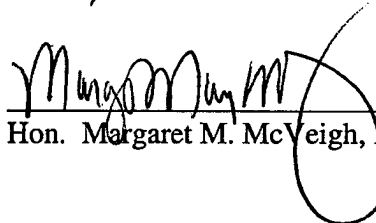
Office of the Attorney General

Lisa D. Kutlin  
Deputy Attorney General  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101  
Lisa.Kutlin@DOL.LPS.STATE.NJ.US  
FAX: 973-648-3879  
Attorney for Plaintiffs

Nicholas Manzi


Frank Imparato, Esq.  
Frank Imparato, LLC  
65 Harristown Road, Suite 202  
Glen Rock, NJ 07452  
fimparato@imparatolaw.com  
FAX: 201 447 5401  
Attorney for Nicholas Manzi

IT IS ON THIS *23* DAY OF *Aug*, 2010 SO ORDERED,  
ADJUDGED AND DECREED.

  
\_\_\_\_\_  
Hon. Margaret M. McVeigh, P.J. Ch.

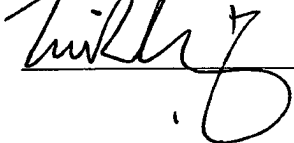
Jointly Approved and Submitted for Entry:

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By:   
\_\_\_\_\_  
Lisa D. Kutlin  
Deputy Attorney General  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101


Dated: 8/10/10

DEFENDANT NICHOLAS MANZI

  
\_\_\_\_\_

Dated: 8/3/2010

FOR DEFENDANT NICHOLAS MANZI:

By:   
\_\_\_\_\_

Frank Imparato, Esq.  
Counsel for Defendant Manzi

Dated: 8/3/10